

\_\_\_\_\_ BILL NO. \_\_\_\_\_

INTRODUCED BY \_\_\_\_\_  
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING DEADLINES FOR THE REVIEW OF MAJOR AND MINOR SUBDIVISION APPLICATIONS; ALLOWING A COUNTY ATTORNEY TO REQUEST THAT A DISTRICT COURT JUDGE EXTEND THE DEADLINE FOR SUBDIVISION APPROVAL OR DENIAL; LIMITING THE EXTENSION TO 6 MONTHS; AMENDING SECTIONS 76-3-604, 76-3-609, 76-3-615, AND 76-4-125, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 76-3-604, MCA, is amended to read:

**"76-3-604. Review of subdivision application -- review for required elements and sufficiency of information.** (1) (a) Within ~~5~~ 10 working days of receipt of a subdivision application submitted in accordance with any deadlines established pursuant to 76-3-504(3) and receipt of the review fee submitted as provided in 76-3-602, the reviewing agent or agency shall determine whether the application contains all of the listed materials as required by 76-3-504(1)(a) and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of the reviewing agent's or agency's determination.

(b) If the reviewing agent or agency determines that elements are missing from the application, the reviewing agent or agency shall identify those elements in the notification.

(2) (a) Within ~~45~~ 30 working days after the reviewing agent or agency notifies the subdivider or the subdivider's agent that the application contains all of the required elements as provided in subsection (1), the reviewing agent or agency shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow for the review of the proposed subdivision under the provisions of this chapter and the local regulations adopted pursuant to this chapter and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of the reviewing agent's or agency's determination.

(b) If the reviewing agent or agency determines that information in the application is not sufficient to allow for review of the proposed subdivision, the reviewing agent or agency shall identify the insufficient information in its notification.

(c) A determination that an application contains sufficient information for review as provided in this

subsection (2) does not ensure that the proposed subdivision will be approved or conditionally approved by the governing body and does not limit the ability of the reviewing agent or agency or the governing body to request additional information during the review process.

(3) The time limits provided in subsections (1) and (2) apply to each submittal of the application until:

(a) a determination is made that the application contains the required elements and sufficient information;

and

(b) the subdivider or the subdivider's agent is notified.

(4) ~~After~~ Except as provided in subsections (5) and (6), after the reviewing agent or agency has notified the subdivider or the subdivider's agent that an application contains sufficient information as provided in subsection (2), the governing body shall approve, conditionally approve, or deny the proposed subdivision within 60 working days, based on its determination of whether the application conforms to the provisions of this chapter and to the local regulations adopted pursuant to this chapter, unless:

(a) the subdivider and the reviewing agent or agency agree to an extension or suspension of the review period, not to exceed ~~1 year~~ 6 months; or

(b) a subsequent public hearing is scheduled and held as provided in 76-3-615.

(5) The county attorney of the county where the planning agent or agency is reviewing the application may apply to district court in the county where the proposed subdivision is located and request that the judge grant an extension of the deadline provided in subsection (4) if, within 15 working days of determining that an application contains sufficient information as provided in subsection (2):

(a) the reviewing agent or agency determines there is a reasonable expectation that the 60-working-day deadline provided in subsection (4) cannot be met; and

(b) the subdivider and the reviewing agent or agency cannot agree to extend or suspend the review pursuant to subsection (4)(a).

(6) (a) The 60-working-day deadline required in subsection (4) is suspended until the judge makes a decision on the request made pursuant to subsection (5).

(b) The extension granted under subsection (5) may not exceed 6 months. The judge shall take into account:

(i) the resources available to the reviewing agent or agency;

(ii) whether existing deadlines impair the governing body's ability to exercise sound judgement; and

(iii) the governing body's duties pursuant to Title 76, chapter 3, and the rights of the subdivider.

1 (c) If the extension is denied, the 60-working-day deadline resumes on the day the planning department  
2 receives the judge's order.

3 ~~(5)(7)~~ If the governing body denies or conditionally approves the proposed subdivision, it shall send the  
4 subdivider a letter, with the appropriate signature, that complies with the provisions of 76-3-620.

5 ~~(6)(8)~~ (a) The governing body shall collect public comment submitted at a hearing or hearings regarding  
6 the information presented pursuant to 76-3-622 and shall make any comments submitted or a summary of the  
7 comments submitted available to the subdivider within 30 days after conditional approval or approval of the  
8 subdivision application and preliminary plat.

9 (b) The subdivider shall, as part of the subdivider's application for sanitation approval, forward the  
10 comments or the summary provided by the governing body to the:

11 (i) reviewing authority provided for in Title 76, chapter 4, for subdivisions that will create one or more  
12 parcels containing less than 20 acres; and

13 (ii) local health department or board of health for proposed subdivisions that will create one or more  
14 parcels containing 20 acres or more and less than 160 acres.

15 ~~(7)(9)~~ (a) For a proposed subdivision that will create one or more parcels containing less than 20 acres,  
16 the governing body may require approval by the department of environmental quality as a condition of approval  
17 of the final plat.

18 (b) For a proposed subdivision that will create one or more parcels containing 20 acres or more, the  
19 governing body may condition approval of the final plat upon the subdivider demonstrating, pursuant to 76-3-622,  
20 that there is an adequate water source and at least one area for a septic system and a replacement drainfield  
21 for each lot.

22 ~~(8)(10)~~ (a) Review and approval, conditional approval, or denial of a proposed subdivision under this  
23 chapter may occur only under those regulations in effect at the time a subdivision application is determined to  
24 contain sufficient information for review as provided in subsection (2).

25 (b) If regulations change during the review periods provided in subsections (1) and (2), the determination  
26 of whether the application contains the required elements and sufficient information must be based on the new  
27 regulations."

28  
29 **Section 2.** Section 76-3-609, MCA, is amended to read:

30 **"76-3-609. Review procedure for minor subdivisions -- determination of sufficiency of application**

1 -- **governing body to adopt regulations.** (1) Minor subdivisions must be reviewed as provided in this section  
2 and subject to the applicable local regulations adopted pursuant to 76-3-504.

3 (2) If the tract of record proposed to be subdivided has not been subdivided or created by a subdivision  
4 under this chapter or has not resulted from a tract of record that has had more than five parcels created from that  
5 tract of record under 76-3-201 or 76-3-207 since July 1, 1973, then the proposed subdivision is a first minor  
6 subdivision from a tract of record and, when legal and physical access to all lots is provided, must be reviewed  
7 as follows:

8 (a) Except as provided in subsection (2)(b), the governing body shall approve, conditionally approve, or  
9 deny the first minor subdivision from a tract of record within ~~35~~ 50 working days of a determination by the  
10 reviewing agent or agency that the application contains required elements and sufficient information for review.  
11 The determination and notification to the subdivider must be made in the same manner as is provided in  
12 76-3-604(1) through (3).

13 (b) The subdivider and the reviewing agent or agency may agree to an extension or suspension of the  
14 review period, not to exceed ~~1-year~~ 6 months.

15 (c) Except as provided in subsection (2)(d)(iii), an application must include a summary of the probable  
16 impacts of the proposed subdivision based on the criteria described in 76-3-608(3).

17 (d) The following requirements do not apply to the first minor subdivision from a tract of record as  
18 provided in subsection (2):

19 (i) the requirement to prepare an environmental assessment;

20 (ii) the requirement to hold a hearing on the subdivision application pursuant to 76-3-605; and

21 (iii) the requirement to review the subdivision for the criteria contained in 76-3-608(3)(a) if the minor  
22 subdivision is proposed in the portion of a jurisdictional area that has adopted zoning regulations that address  
23 the criteria in 76-3-608(3)(a).

24 (e) The governing body may adopt regulations that establish requirements for the expedited review of  
25 the first minor subdivision from a tract of record. The following apply to a proposed subdivision reviewed under  
26 the regulations:

27 (i) 76-3-608(3); and

28 (ii) the provisions of Title 76, chapter 4, part 1, whenever approval is required by those provisions.

29 (3) Except as provided in 76-3-616 and subsection (4) of this section, any minor subdivision that is not  
30 a first minor subdivision from a tract of record, as provided in subsection (2), is a subsequent minor subdivision

1 and must be reviewed as provided in 76-3-601 through 76-3-605, 76-3-608, 76-3-610 through 76-3-614, and  
2 76-3-620.

3 (4) The governing body may adopt subdivision regulations that establish requirements for review of  
4 subsequent minor subdivisions that meet or exceed the requirements that apply to the first minor subdivision, as  
5 provided in subsection (2) and this chapter.

6 (5) (a) Review and approval, conditional approval, or denial of a subdivision under this chapter may  
7 occur only under those regulations in effect at the time that a subdivision application is determined to contain  
8 sufficient information for review as provided in subsection (2).

9 (b) If regulations change during the period that the application is reviewed for required elements and  
10 sufficient information, the determination of whether the application contains the required elements and sufficient  
11 information must be based on the new regulations."  
12

13 **Section 3.** Section 76-3-615, MCA, is amended to read:

14 **"76-3-615. Subsequent hearings -- consideration of new information -- requirements for**  
15 **regulations.** (1) The regulations adopted pursuant to 76-3-504(1)(o) must comply with the provisions of this  
16 section.

17 (2) The governing body shall determine whether public comments or documents presented to the  
18 governing body at a hearing held pursuant to 76-3-605 constitute:

19 (a) information or analysis of information that was presented at a hearing held pursuant to 76-3-605 that  
20 the public has had a reasonable opportunity to examine and on which the public has had a reasonable  
21 opportunity to comment; or

22 (b) new information regarding a subdivision application that has never been submitted as evidence or  
23 considered by either the governing body or its agent or agency at a hearing during which the subdivision  
24 application was considered.

25 (3) If the governing body determines that the public comments or documents constitute the information  
26 described in subsection (2)(b), the governing body may:

27 (a) approve, conditionally approve, or deny the proposed subdivision without basing its decision on the  
28 new information if the governing body determines that the new information is either irrelevant or not credible; or

29 (b) schedule or direct its agent or agency to schedule a subsequent public hearing for consideration of  
30 only the new information that may have an impact on the findings and conclusions that the governing body will

1 rely upon in making its decision on the proposed subdivision.

2 (4) ~~If Except as provided in 76-3-604(6),~~ if a public hearing is held as provided in subsection (3)(b), the  
3 60-working-day review period required in 76-3-604(4) is suspended and the new hearing must be noticed and  
4 held within 45 days of the governing body's determination to schedule a new hearing. After the new hearing, the  
5 60-working-day time limit resumes at the governing body's next scheduled public meeting for which proper notice  
6 for the public hearing on the subdivision application can be provided. The governing body may not consider any  
7 information regarding the subdivision application that is presented after the hearing when making its decision to  
8 approve, conditionally approve, or deny the proposed subdivision."

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10 **Section 4.** Section 76-4-125, MCA, is amended to read:

11 **"76-4-125. Review of subdivision application -- land divisions excluded from review.** (1) Except  
12 as provided in subsection (2), an application for review of a subdivision must be submitted to the reviewing  
13 authority. The review by the reviewing authority must be as follows:

14 (a) At any time after the developer has submitted an application under the Montana Subdivision and  
15 Platting Act, the developer shall present a subdivision application to the reviewing authority. The application must  
16 include preliminary plans and specifications for the proposed development, whatever information the developer  
17 feels necessary for its subsequent review, any public comments or summaries of public comments collected as  
18 provided in ~~76-3-604(6)~~ 76-3-604(8), and information required by the reviewing authority. Subdivision fees  
19 assessed by the reviewing authority must accompany the application. If the proposed development includes  
20 onsite sewage disposal facilities, the developer shall notify the designated agent of the local board of health prior  
21 to presenting the subdivision application to the reviewing authority. The agent may conduct a preliminary site  
22 assessment to determine whether the site meets applicable state and local requirements.

23 (b) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall make a final decision  
24 on the proposed subdivision within 60 days after the submission of a complete application and payment of fees  
25 to the reviewing authority unless an environmental impact statement is required, at which time this deadline may  
26 be increased to 120 days. The reviewing authority may not request additional information for the purpose of  
27 extending the time allowed for a review and final decision on the proposed subdivision. If the department  
28 approves the subdivision, the department shall issue a certificate of subdivision approval indicating that it has  
29 approved the plans and specifications and that the subdivision is not subject to a sanitary restriction.

30 (2) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to

1 the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade  
2 the provisions of this part, are not subject to review:

3 (a) the exclusions cited in 76-3-201 and 76-3-204;

4 (b) divisions made for the purpose of acquiring additional land to become part of an approved parcel,  
5 provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and  
6 that the division does not fall within a previously platted or approved subdivision;

7 (c) divisions made for purposes other than the construction of water supply or sewage and solid waste  
8 disposal facilities as the department specifies by rule;

9 (d) divisions located within jurisdictional areas that have adopted growth policies pursuant to chapter 1  
10 or within first-class or second-class municipalities for which the governing body certifies, pursuant to 76-4-127,  
11 that adequate storm water drainage and adequate municipal facilities will be provided; and

12 (e) subject to the provisions of subsection (3), a remainder of an original tract created by segregating  
13 a parcel from the tract for purposes of transfer if:

14 (i) the remainder is served by a public or multiple-user sewage system approved before January 1, 1997,  
15 pursuant to local regulations or this chapter; or

16 (ii) the remainder is 1 acre or larger and has an individual sewage system serving a discharge source  
17 that was in existence prior to April 29, 1993, and, if required when installed, the system was approved pursuant  
18 to local regulations or this chapter.

19 (3) Consistent with the applicable provisions of 50-2-116, a local health officer may require that, prior  
20 to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated from  
21 the remainder referenced in subsection (2)(e)(ii), the remainder include acreage or features sufficient to  
22 accommodate a replacement drainfield."

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24 **NEW SECTION. Section 5. Saving clause.** [This act] does not affect rights and duties that matured,  
25 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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27 **NEW SECTION. Section 6. Applicability.** [This act] applies to subdivision applications received after  
28 [the effective date of this act].

29 - END -